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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/810,382	03/26/2004	Chun-Li Fang	N1085-00264	8625
54657	7590	06/05/2007	EXAMINER	
DUANE MORRIS LLP IP DEPARTMENT (TSMC) 30 SOUTH 17TH STREET PHILADELPHIA, PA 19103-4196			GROSSO, HARRY A	
ART UNIT		PAPER NUMBER		
3781				
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	Application No.	Applicant(s)
	10/810,382	FANG ET AL.
Examiner	Art Unit	
Harry A. Grosso	3781	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

1) Responsive to communication(s) filed on 13 March 2007.  
 2a) This action is FINAL.                    2b) This action is non-final.  
 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

4) Claim(s) 1,3,5-18 and 20-23 is/are pending in the application.  
 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.  
 5) Claim(s) \_\_\_\_\_ is/are allowed.  
 6) Claim(s) 1,3,5-18 and 20-23 is/are rejected.  
 7) Claim(s) \_\_\_\_\_ is/are objected to.  
 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

9) The specification is objected to by the Examiner.  
 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).  
 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
 a) All    b) Some \* c) None of:  
 1. Certified copies of the priority documents have been received.  
 2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

1) Notice of References Cited (PTO-892)  
 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)  
 3) Information Disclosure Statement(s) (PTO/SB/08)  
 Paper No(s)/Mail Date \_\_\_\_\_

4) Interview Summary (PTO-413)  
 Paper No(s)/Mail Date. \_\_\_\_\_

5) Notice of Informal Patent Application

6) Other: \_\_\_\_\_

## **DETAILED ACTION**

### ***Drawings***

1. The drawing objection under 37 CFR 1.83(a) has been overcome by the amendment filed March 13, 2007. The objection is withdrawn.
2. New corrected drawings in compliance with 37 CFR 1.121(d) are required in this application because the lines, numbers and letters are not uniformly thick and well defined; the numbers and reference characters are not plain and legible; the Figure legends are poor. A Notice of Draftsperson's Patent Drawing Review (PTO-948) accompanied the previous Office Action in this application. Applicant is advised to employ the services of a competent patent draftsperson outside the Office, as the U.S. Patent and Trademark Office no longer prepares new drawings. The corrected drawings are required in reply to the Office action to avoid abandonment of the application. The requirement for corrected drawings will not be held in abeyance.

### ***Claim Rejections - 35 USC § 112***

3. The rejection of claim 14 under 35 U.S.C. 112, second paragraph, has been overcome by the amendment filed March 13, 2007. The rejection is withdrawn.
4. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.
5. Claim 3 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

6. Claim 3 is dependent on claim 2, however, claim 2 has been canceled. It appears claim 3 should be dependent on claim 1 and will be read as such for the purposes of this action.

***Claim Rejections - 35 USC § 102***

7. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

8. Claims 1, 6, 7, 17 and 18 are rejected under 35 U.S.C. 102(b) as being anticipated by Bernstein et al (5,385,259) (Bernstein).

9. Regarding claim 1, Bernstein discloses a waste receptacle (Figures 1-6, column 3, lines 16-22) having an exterior wall (20), an interior receptacle defined by the interior of the wall and an interior bag closure mechanism (24) that is operable from the exterior (column 3, lines 16-28) and closes a bag (26) disposed in the receptacle. The bag closure mechanism comprises a rotator assembly (24) that grasps the open section of the bag and rotates to close the bag (column 3, lines 36-50 and lines 58-65). The cover (22) acts as a handle for moving the rotating member since it is grasped by the hands and moved to move the rotating member

10. Regarding claim 6, the cover (22) is twisted about a vertical axis as it is moved to move the rotating member.

11. Regarding claim 7, the ribs (78) in the lid act as clamps to clamp the upper edge of the bag to the rotating member (column 3, lines 59-65).

12. Regarding claim 17, Bernstein discloses a waste receptacle (Figures 1-6, column 3, lines 16-22) having an exterior wall (20), an interior receptacle defined by the interior of the wall and an interior bag closure mechanism (24) with a rotator assembly (24) that grasps the open section of the bag and rotates to close the bag (column 3, lines 36-50 and lines 58-65). The cover (22) acts as a handle for moving the rotating member since it is grasped by the hands and moved to move the rotating member. The cover is twisted about a vertical axis as it is moved to move the rotating member.

13. Regarding claim 18, the rotator assembly is operable externally.

***Claim Rejections - 35 USC § 103***

14. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

15. Claims 1 and 3 are rejected under 35 U.S.C. 103(a) as being unpatentable over Sumanis (5,125,526).

16. Regarding claims 1, Sumanis discloses a waste receptacle (Figures 1-6) with an exterior wall (13), an interior receptacle (40), and a mechanism for interior bag closure operable from the exterior. Sumanis discloses a handle (18) disposed outside of the exterior wall that rotates the rotating member, the element (18) constitutes a handle by virtue of the fact that it can be operated by the hand.

Sumanis discloses the claimed invention except for the rotator assembly that grasps an upper open section of the flexible bag and rotates the upper open section relative to a bottom closed end. It would have been obvious to one having ordinary skill in the art at the time the invention was made to have used a rotator assembly that grasps an upper open section of the flexible bag and rotates the upper open section relative to a bottom closed end, since it has been held that a mere reversal of the essential working parts of a device involves only routine skill in the art. *In re Einstein*, 8 USPQ 167.

17. Regarding claim 3, the interior receptacle is separated from the exterior wall by a gap.

Claim 3 is rejected under 35 U.S.C. 103(a) as being unpatentable over Bernstein in view of Yang et al (7,077,283). Bernstein discloses the invention as discussed except for an interior receptacle spaced from the exterior wall. Yang et al discloses a waste receptacle with an interior receptacle (50, Figures 1 and 5) spaced from the exterior wall for holding an interior trash bag and facilitating more convenient replacement of the trash bag (column 1, line 57 to column 2, line 3). It would have been obvious to one of ordinary skill in the art at the time the invention was made to have incorporated the use of an interior receptacle as disclosed by Yang et al in the receptacle disclosed by Bernstein to facilitate more convenient replacement of the trash bag.

18. Claim 5 is rejected under 35 U.S.C. 103(a) as being unpatentable over Bernstein in view of Phillips (3,321,103). Bernstein discloses the invention as discussed with regard to claim 1 above except for a clamp to releasably secure the bottom end of the

bag. Phillips discloses a waste receptacle where the bag is closed by rotating an assembly that grasps the open top end of the bag and Phillips further discloses a clamp that releasably secures the bag to prevent it from rotating when the bag is closed (41, Figure 2, column 1, lines 54-59; column 2, lines 13-14). The vertical position of the clamp is adjustable and the clamp is capable of securing the bottom of the bag. It would have been obvious to one of ordinary skill in the art at the time the invention was made to have incorporated the use of a clamp securing the bottom of the bag as disclosed by Phillips in the receptacle disclosed by Bernstein to prevent the bottom of the bag from rotating while the bag is being closed.

19. Claims 8 and 21 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bernstein in view of Melnikov (4,030,629). Bernstein discloses the invention of claims 7 and 17 and further discloses the rotating member is received in a cavity (48) of the exterior wall for rotation (column 3, lines 36-43). Bernstein does not teach the use of ball bearings. Melnikov discloses the use of ball bearings (18) in a rotating assembly used to close a flexible opening. It would have been obvious to one of ordinary skill in the art at the time the invention was made to have incorporated the use of ball bearings in the cavity with the rotating member as disclosed by Melnikov in the cavity with the rotating member in the receptacle disclosed by Bernstein to make movement of the rotator assembly smoother and easier.

20. Claims 9-13 are rejected under 35 U.S.C. 103(a) as being unpatentable over Sumanis in view of Scanlan (5,121,590).

21. Regarding claim 9, Sumanis discloses the invention with a cover that engages an upper rim of the exterior wall but does not teach the use of an exhaust system. Scanlan discloses a container with an exhaust system (Figure 2, column 3, line 66 to column 4, line 24) where the center portion of the lid (defined by a ridge on the interior of the lid) with the outer cup (41) acts as the hood with an exhaust port (21). It would have been obvious to one of ordinary skill in the art at the time the invention was made to have incorporated the use of an exhaust system as disclosed by Scanlan in the receptacle disclosed by Sumanis to seal the lid tightly when the receptacle is closed.
22. Regarding claim 10, the receptacle of Sumanis as modified by Scanlan includes a vacuum pump (38, Figure 5, column 5, lines 45-48).
23. Regarding claim 11, the receptacle of Sumanis as modified by Scanlan includes a rubber sealing portion engaging the upper rim (19, Figure 2, column 4, lines 11-16).
24. Regarding claim 12, the receptacle of Sumanis as modified by Scanlan includes a shutoff valve (16, column 4, lines 26-28).
25. Regarding claim 13, the receptacle of Sumanis as modified by Scanlan comprises a foot pedal that opens the cover.
26. Claims 9, 10, 14, 15 and 20, 22 and 23 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bernstein in view of Terui et al (JP 01252401A, October 9, 1989) (Terui).
27. Regarding claim 9, Bernstein discloses the invention with a lid that engages an upper rim of the exterior wall and a section of the cover with a deodorant basket assembly but does not teach the use of an exhaust system. Terui discloses a waste

receptacle with an exhaust system in the cover (Figures 3-5, abstract) with an exhaust port (6) to sterilize and deodorize the air in the receptacle and exhaust it. It would have been obvious to one of ordinary skill in the art at the time the invention was made to have incorporated the use of the exhaust system as disclosed by Terui in the receptacle disclosed by Bernstein to replace the deodorant basket so as to both sterilize and deodorize the air in the receptacle and exhaust it.

28. Regarding claim 10, the receptacle of Bernstein as modified by Terui includes a pump, the fan (11) that acts as a pump in moving the air.

29. Regarding claim 14, the receptacle of Bernstein as modified by Terui includes a double walled perimeter with the outer wall for the hood being the exterior wall of the cover and a gas permeable interior wall (5 in Terui) with the exhaust port (6) in the outer wall.

30. Regarding claim 15, the receptacle of Bernstein as modified by Terui has a gas permeable inner wall (5) that is perforated (Terui, Figures 3 and 4).

31. Regarding claim 20, Bernstein discloses the invention of claim 17 with a cover but does not teach an exhaust hood beneath said cover. Terui discloses a waste receptacle with an exhaust system in the cover (Figures 3-5, abstract) with an exhaust port (6) to sterilize and deodorize the air in the receptacle and exhaust it. It would have been obvious to one of ordinary skill in the art at the time the invention was made to have incorporated the use of the exhaust system as disclosed by Terui in the receptacle disclosed by Bernstein to replace the deodorant basket so as to both sterilize and deodorize the air in the receptacle and exhaust it.

32. Claim 16 is rejected under 35 U.S.C. 103(a) as being unpatentable over Bernstein in view of Terui, Yang et al (7,077,283) and Phillips. Bernstein discloses a waste receptacle (Figures 1-6, column 3, lines 16-28) having an exterior wall (20) and an interior bag closure mechanism (24) that is operable from the exterior (column 6, lines 62-66). Bernstein does not teach an interior receptacle spaced from the exterior wall. Yang et al discloses a waste receptacle with an interior receptacle (50, Figures 1 and 5) spaced from the exterior wall for holding an interior trash bag and facilitating more convenient replacement of the trash bag (column 1, line 57 to column 2, line 3). It would have been obvious to one of ordinary skill in the art at the time the invention was made to have incorporated the use of an interior receptacle as disclosed by Yang et al in the receptacle disclosed by Bernstein to facilitate more convenient replacement of the trash bag.

Bernstein does not teach an exhaust hood beneath said cover. Terui discloses a waste receptacle with an exhaust system in the cover (Figures 3-5, abstract) with an exhaust port (6) to sterilize and deodorize the air in the receptacle and exhaust it. It would have been obvious to one of ordinary skill in the art at the time the invention was made to have incorporated the use of the exhaust system as disclosed by Terui in the receptacle disclosed by Bernstein to replace the deodorant basket so as to both sterilize and deodorize the air in the receptacle and exhaust it.

Bernstein does not teach the use of a clamp to releasably secure the bottom end of the bag. Phillips discloses a waste receptacle where the bag is closed by rotating an assembly that grasps the open top end of the bag and Phillips further discloses a clamp

that releasably secures the bag to prevent it from rotating when the bag is closed (41, Figure 2, column 1, lines 54-59; column 2, lines 13-14). The vertical position of the clamp is adjustable and the clamp is capable of securing the bottom of the bag. It would have been obvious to one of ordinary skill in the art at the time the invention was made to have incorporated the use of a clamp securing the bottom of the bag as disclosed by Phillips in the receptacle disclosed by Bernstein to prevent the bottom of the bag from rotating while the bag is being closed.

33. Claims 22 and 23 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bernstein in view of Terui and Yang et al.

34. Regarding claims 22 and 23, Bernstein provides a trash receptacle with an exterior wall and an interior that is a receptacle for receiving a bag, a cover that sealably engages the exterior wall. Bernstein further discloses opening the cover, introducing trash, closing the cover and closing the bag using an interior bag closure mechanism that rotates an open upper section of the bag (column 6, lines 43-66).

Bernstein does not teach an interior receptacle spaced from the exterior wall. Yang et al discloses a waste receptacle with an interior receptacle (50, Figures 1 and 5) spaced from the exterior wall for holding an interior trash bag and facilitating more convenient replacement of the trash bag (column 1, line 57 to column 2, line 3). It would have been obvious to one of ordinary skill in the art at the time the invention was made to have incorporated the use of an interior receptacle as disclosed by Yang et al in the receptacle disclosed by Bernstein to facilitate more convenient replacement of the trash bag.

Bernstein does not teach an exhaust hood beneath said cover. Terui discloses a waste receptacle with an exhaust system in the cover (Figures 3-5, abstract) with an exhaust port (6) to sterilize and deodorize the air in the receptacle and exhaust it. It would have been obvious to one of ordinary skill in the art at the time the invention was made to have incorporated the use of the exhaust system as disclosed by Terui in the receptacle disclosed by Bernstein to replace the deodorant basket so as to both sterilize and deodorize the air in the receptacle and exhaust it.

***Response to Arguments***

35. Applicant's arguments filed March 13, 2007 have been fully considered but they are not persuasive. Applicant argues that Sumanis does not disclose a handle. In response, Sumanis discloses a handle (18) disposed outside of the exterior wall that rotates the rotating member, the element (18) constitutes a handle by virtue of the fact that it can be operated by the hand.

36. Applicant argues that the cover (22) of Bernstein is not exterior to the pail of Bernstein. In response, the cover forms the upper outer surface of the waste receptacle of Bernstein and, as such, the cover is certainly part of the exterior of the receptacle.

37. Applicant argues that Bernstein does not disclose a handle that twists to cause the rotator assembly to rotate. In response, the cover (22) acts as a handle for moving the rotating member since it is grasped by the hands and moved to move the rotating member and is twisted about a vertical axis as it is moved to move the rotating member.

38. Applicant argues that Phillips does not disclose a clamp that secures the bottom closed end of the bag. In response, Phillips discloses a clamp (41) that whose position

can be vertically adjusted on pole (42, column 1, lines 54-59 of Phillips). Thus, the clamp can be positioned at the bottom of the bag, securing the bottom of the bag against movement.

39. Applicant argues that Meinikov does not provide for closing a bag disposed in an interior receptacle and having its upper edges received in a closure mechanism. In response, Meinikov is relied on for any of this structure. Meinikov is used as a teaching for the use of ball bearings in a rotating assembly.

***Conclusion***

40. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Harry A. Grosso whose telephone number is 571-272-

4539. The examiner can normally be reached on Monday through Thursday from 7am to 4 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Anthony Stashick can be reached on 571-272-4561. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

  
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